

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
vs. ) No. 11 CR 699-1  
 )  
YIHAO PU, also known as Ben Pu, ) Chicago, Illinois  
 ) May 5, 2016  
Defendant. ) 10:30 A.M.

TRANSCRIPT OF PROCEEDINGS - Resentencing  
BEFORE THE HONORABLE CHARLES R. NORGLÉ, SR.

APPEARANCES:

For the Government: HON. ZACHARY FARDON  
219 South Dearborn Street  
Chicago, Illinois 60604  
BY: MR. PATRICK MARK OTLEWSKI

For the Defendant: FLACHSBART & GREENSPOON, LLC  
333 North Michigan Avenue  
27th Floor  
Chicago, Illinois 60601  
BY: MR. WILLIAM W. FLACHSBART

MS. CAROLYN PELLING GURLAND  
414 North Clay Street  
Hinsdale, Illinois 60521

ALSO PRESENT: Ms. Kelly A. Rice  
  
Mr. Yihao Pu  
(appearing telephonically)

PAMELA S. WARREN, CSR, RPR  
Official Court Reporter  
219 South Dearborn Street  
Room 2342  
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(312) 408-5100

1 (Proceedings had in open court.)

2 THE CLERK: 11 CR 699 United States of America versus  
3 Yihao Pu, resentence.

4 MR. OTLEWSKI: Patrick Otlewski on behalf of the  
5 United States.

6 MS. RICE: Good morning, your Honor. Kelly Rice on  
7 behalf of probation.

8 MR. FLACHSBART: Good morning, your Honor. William  
9 Flachsbart on behalf of Ben Pu. And the rest of -- Carolyn  
10 Gurland is also appearing today. She will be here. She is  
11 just right behind me.

12 THE COURT: All right. Mr. Fulbright, where do we  
13 stand with the Bureau of Prisons?

14 THE CLERK: Mr. Pu? Hello? Could you have Mr. Pu  
15 state that he's present?

16 THE DEFENDANT: Yes. This is Yihao Pu.

17 THE COURT: Ask Mr. Pu to raise his right hand to be  
18 sworn by Mr. Fulbright, the clerk of the court.

19 THE CLERK: Please raise your right hand.

20 (Defendant sworn.)

21 THE COURT: Since the Seventh Circuit opinion,  
22 counsel, have you reached any agreements or understandings with  
23 respect to the ultimate sentence in this case?

24 MR. OTLEWSKI: We haven't reached any agreement with  
25 respect to the ultimate sentence, your Honor, however I think

1 we actually are at least at the same Sentencing Guideline range  
2 at this point.

3 THE COURT: Is that correct?

4 MR. FLACHSBART: That's correct, your Honor.

5 THE COURT: And what is that agreed Sentencing  
6 Guideline range?

7 MR. OTLEWSKI: The resulting range, your Honor, and  
8 when we start, I'll be prepared to walk through how we arrived  
9 at that -- is 12 to 18 months.

10 MR. FLACHSBART: Could we just take some time and walk  
11 through, your Honor, how we get there?

12 MR. OTLEWSKI: I'll be happy to do that.

13 THE COURT: Yes. Also I want to recognize the  
14 presence of the probation officer.

15 Your name, please?

16 MS. RICE: Kelly rice.

17 THE COURT: Good morning. You may be seated if you  
18 wish.

19 MS. RICE: Thank you.

20 MR. OTLEWSKI: Your Honor, under the defendant's  
21 criminal history category he is a one. He has zero criminal  
22 history points, placing him in Criminal History 1.

23 Under Guideline 2B1.1, the base offense level is six.  
24 It is the government's view that loss cannot be determined in  
25 this matter under 2B1.1B1.

1 THE COURT: You mean actual loss or intended loss?

2 MR. OTLEWSKI: Either, your Honor.

3 THE COURT: Proceed.

4 MR. OTLEWSKI: And then, your Honor, if we go to the  
5 enhancements that apply under 2B1.1, it was the government's  
6 position that under Subsection 10 that the offense conduct  
7 involves sophisticated means. That's from the -- from the  
8 defense statement that was filed. It is our understanding that  
9 there is no objection to it. Which would result in a two-level  
10 increase normally. But since the resulting offense level is  
11 less than 12, the offense level is increased to 12.

12 And then, your Honor, if we look to the Section 3  
13 enhancements under the guidelines, there is an enhancement for  
14 abuse of a position of trust and use of special skill, which  
15 increases the offense level two more levels.

16 The defendant also receives a two-level enhancement  
17 for obstruction of justice.

18 And then if you take three levels off for acceptance  
19 of responsibility, that puts us, your Honor -- I'm sorry -- at  
20 Level 13. Guideline -- low end of the guideline range is 12.  
21 The high end is 18 months within Zone C.

22 THE COURT: What is your response to that assertion?

23 MR. FLACHSBART: Your Honor, Mr. Otlewski has  
24 correctly summarized the sentencing guidelines, and we agree  
25 with all of them.

1 THE COURT: Another lawyer has joined us.

2 Your name, please?

3 MS. GURLAND: Good morning, your Honor. Carolyn

4 Gurland on behalf of defendant Ben Pu.

5 THE COURT: Good morning.

6 I have the Seventh Circuit opinion before me and have  
7 read all 22 pages. Ultimately we must look to the last page  
8 here for some guidance. And I'm quoting from the slip opinion.  
9 It says a letter like the one submitted, coupled with invoices  
10 from the firms, would be more helpful, number one.

11 And then it goes on to say, the government must  
12 provide an explanation supported by evidence of how each  
13 professional's time was spent investigating the data breach,  
14 being certain that the evidence provides adequate indication  
15 that the hours claimed are reasonable.

16 And then, third, the Court must ensure that the amount  
17 claimed was in fact incurred by the investigation of Pu's  
18 misconduct.

19 I will accept your agreed position that the guideline  
20 range is 12 to 18 months. And so let us now proceed to what  
21 the Seventh Circuit has directed us to do. And since the  
22 matter was reset for sentencing, the government has submitted  
23 various documents.

24 Is that right?

25 MR. OTLEWSKI: That's correct, your Honor. And, your

1 Honor --

2 THE COURT: First let me ask, is there a remaining  
3 challenge to the restitution figure earlier determined by the  
4 Court?

5 MR. FLACHSBART: Yes, your Honor.

6 THE COURT: Was there originally?

7 MR. FLACHSBART: Yes, your Honor.

8 THE COURT: More or less the Seventh Circuit said?

9 MR. FLACHSBART: Correct.

10 THE COURT: All right. So the government may proceed  
11 with its additional evidence, for example, a letter.

12 Proceed.

13 MR. OTLEWSKI: Yes, your Honor. What we have  
14 discussed with defense counsel, and I think it makes sense  
15 under the circumstances, defense counsel raised various  
16 objections to the invoices that were provided from the  
17 Greenburg Traurig and FTI, the forensic computer analysis firm,  
18 that was engaged by Citadel after the discovery of defendant  
19 Ben Pu's theft of trade secrets. The government has gone back  
20 and obtained updated invoices both from Greenburg Traurig and  
21 FTI. And pursuant to Title 18, United States Code, Section  
22 366, four -- I'm sorry -- 3664, the government and defense  
23 counsel have agreed that it makes most sense for us to set a  
24 hearing approximately 30 days out to solely address the issue  
25 of restitution in light of this new information that the

1 government received yesterday, but proceed with sentencing  
2 today and leave the question of restitution to be decided at  
3 that other hearing.

4 THE COURT: What is your response?

5 MR. FLACHSBART: We have no objection, your Honor. We  
6 did receive -- we raised numerous objections to the invoices --

7 THE COURT: Well, if I add up all of the numerous  
8 objections you have raised, what figure do you reach?

9 MR. FLACHSBART: There is too much redactions for us  
10 to have a figure.

11 THE COURT: Well, you can't just make an argument  
12 without some form of submission. You have no submission,  
13 right?

14 MR. FLACHSBART: No, we submitted to your Honor a  
15 memorandum --

16 THE COURT: A memorandum. But you have no evidence as  
17 such. You have a memorandum which argues, right?

18 MR. FLACHSBART: I don't understand your question,  
19 your Honor.

20 THE COURT: Well, you have no evidence to present to  
21 the Court.

22 MR. FLACHSBART: The evidence is contained in the  
23 bills that were presented.

24 THE COURT: Okay. But you have none of your own  
25 evidence.

1 MR. FLACHSBART: To --

2 THE COURT: Your challenge is to the government's  
3 evidence.

4 MR. FLACHSBART: Correct, your Honor. As the Eighth  
5 Circuit --

6 THE COURT: But you -- but you do not have any  
7 evidence to support your view of the restitution figure.

8 MR. FLACHSBART: That's false, your Honor. We have  
9 their submission. Their submission --

10 THE COURT: You do not have your own, right?

11 MR. FLACHSBART: It is different evidence.

12 THE COURT: Do you have any evidence to support your  
13 position?

14 MR. FLACHSBART: Yes, your Honor. We have --

15 THE COURT: May I have a copy of what you have?

16 MR. FLACHSBART: We have their submission, which they  
17 provided to your Honor.

18 THE COURT: So your evidence is their evidence.

19 MR. FLACHSBART: Correct.

20 THE COURT: But you have none of your own.

21 MR. FLACHSBART: No different evidence, no, your  
22 Honor, because --

23 THE COURT: Well, it took four questions to get to  
24 that point. You have no independent submission yourself,  
25 right?



1 MR. FLACHSBART: Other than our memorandum, your  
2 Honor, no.

3 THE COURT: That's not evidence, that's a memorandum  
4 by you as a lawyer.

5 MR. FLACHSBART: Your Honor, the evidence --

6 THE COURT: Well, don't you agree?

7 MR. FLACHSBART: That what? That a memorandum --

8 THE COURT: That a memorandum is not evidence.

9 MR. FLACHSBART: Absolutely I agree with --

10 THE COURT: All right.

11 MR. FLACHSBART: -- that point, your Honor.

12 THE COURT: So it is clear then you have no evidence  
13 as such to present to the Court. Your challenge is to the  
14 government's evidence.

15 MR. FLACHSBART: Correct. Our challenge is to the --

16 THE COURT: All right. So if the Court accepts your  
17 argument, what figure do you reach?

18 MR. FLACHSBART: On the record before the Court, your  
19 Honor, zero. They have provided no evidence of unredacted time  
20 entries, no summary letter --

21 THE COURT: That is an absurd position to take. That  
22 there is no restitution in this case?

23 MR. FLACHSBART: No.

24 THE COURT: That there is zero?

25 MR. FLACHSBART: Your Honor, we do not take that

1 position.

2 THE COURT: Is that what you just said?

3 MR. FLACHSBART: On the record before --

4 THE COURT: You just said zero, right?

5 MR. FLACHSBART: On the record before your Honor --

6 THE COURT: Well, look, you have got to stop fencing  
7 with me.

8 MR. FLACHSBART: Yes, your Honor.

9 THE COURT: You earlier said restitution was zero,  
10 isn't that correct?

11 MR. FLACHSBART: I am unable on the -- on the --

12 THE COURT: My question is did you earlier just say  
13 that the restitution was zero?

14 MR. FLACHSBART: On the record before us I did say  
15 that, your Honor.

16 THE COURT: All right. Is that your position, zero  
17 restitution?

18 MR. FLACHSBART: Only on the record before us. We  
19 were provided new invoices --

20 THE COURT: Well, wait a minute.

21 MR. FLACHSBART: -- this morning.

22 THE COURT: Is it your position today that restitution  
23 is zero?

24 MR. FLACHSBART: Yes, your Honor.

25 THE COURT: All right. So you want more time now,

1 right?

2 MR. FLACHSBART: The government would like more time.

3 THE COURT: But do you want more time?

4 MR. FLACHSBART: I think that's reasonable, your  
5 Honor, yes.

6 THE COURT: Well, do you want more time?

7 MR. FLACHSBART: Yes.

8 THE COURT: How much time do you want?

9 MR. FLACHSBART: I think the government's 30 days is -  
10 -

11 THE COURT: How much time do you want?

12 MR. FLACHSBART: Thirty days is fine.

13 THE COURT: All right. We'll make it 35. Let's see  
14 where that takes us. That would be, I think, June 7th.

15 Is that an agreeable date?

16 MR. OTLEWSKI: That is for the government.

17 MR. FLACHSBART: That's good for us, your Honor.

18 THE COURT: All right. The issue of restitution will  
19 continue to June 7th. Once again, we'll make it at 10:30.

20 MR. OTLEWSKI: Thank you, your Honor.

21 THE COURT: Now as to the other aspects of sentencing,  
22 what sentence is the Court -- excuse me -- is the government  
23 asking the Court to impose on resentencing as directed by the  
24 Seventh Circuit?

25 MR. OTLEWSKI: Your Honor, the government has

1 recommended a sentence of 18 months's incarceration.

2 THE COURT: All right. And what is the defendant's  
3 position?

4 MR. FLACHSBART: Your Honor, the defendant is asking  
5 for time served, which is just over a year.

6 THE COURT: All right. The government may argue its  
7 position regarding the sentence, and then we'll give defense  
8 counsel an opportunity to make his case as well.

9 MR. FLACHSBART: Thank you, your Honor.

10 MR. OTLEWSKI: Your Honor, I won't repeat all the  
11 arguments that we did last time. I trust that the Court has  
12 reviewed the record and also reviewed our submission in advance  
13 of the hearing today.

14 THE COURT: Well, your submission was presented to the  
15 Court on April 25, 2016, is that right?

16 MR. OTLEWSKI: That's correct, your Honor.

17 THE COURT: All right. That's the one you are  
18 referring to.

19 MR. OTLEWSKI: Yes, your Honor.

20 THE COURT: And along with your submission, there are  
21 numerous letters submitted by the defendant, which the Court  
22 has read and will take into account.

23 You may proceed.

24 MR. OTLEWSKI: Thank you, your Honor.

25 Your Honor, like I said, I won't repeat the arguments

1 that we made in our April 25th submission. I do think there  
2 are some points that are worth highlighting.

3 The first is the unique posture that we find ourselves  
4 in. It is the -- a combination of the difficulty that this  
5 case presented during the original sentencing hearing, and the,  
6 for lack of a better word, lack of clarity from the Seventh  
7 Circuit regarding the scope of remand.

8 And I'll talk about the first issue first, which was  
9 the original posture that this case came before the Court.  
10 Unlike a number of trade secrets cases that have been charged  
11 and prosecuted in other districts where a defendant's crime has  
12 been completed and the defendant has either taken the trade  
13 secrets to a competitor and tried to sell them or taken them to  
14 a new employer and tried to use them for his benefit at that  
15 new employer, this case found itself in a different posture.  
16 The defendant was caught, for lack of a better word, with his  
17 hand in the cookie jar. Citadel figured out what the defendant  
18 was doing while he was doing it and was able to interrupt his  
19 scheme.

20 What we do know from what the defendant was doing, we  
21 know what he did and what the defendant has pled guilty to, was  
22 stealing trade secrets from Citadel, from stealing trade  
23 secrets from his other employer Company A, with the intent to  
24 cause them -- I'm sorry -- for the economic benefit of himself.

25 And what limited information we have on that latter

1 point, your Honor, indicates that the defendant was doing that.  
2 The defendant was trading in his own account. He had  
3 essentially set up a system to stream trade secrets to his  
4 interactive broker's account which he was using to trade on  
5 securities in similar fashion to the way that Citadel traded  
6 using its trade secrets.

7 Now the defense in its submission, and they have an  
8 individual that they purport to be an expert in this field, who  
9 said that the defendant was nothing more than a hoarder or  
10 someone who was trying to help Citadel with the side projects  
11 was Sunny Uppal.

12 Your Honor, the evidence does not support either of  
13 these contentions. While it is true that the defendant might  
14 have collected a lot of data from his former employers, the  
15 nature of the data that the defendant stole and hoarded was  
16 valuable trade secrets, things that were proven money making  
17 machines from Company A, as well as from Citadel. If he  
18 was -- that separates this defendant from someone who might  
19 just collect things along the way and hold on to them for  
20 extended periods of time with no other apparent interest other  
21 than just to look at the records and know that he has them or  
22 make them publicly available to others. He was looking for a  
23 way to make money himself.

24 And this venture between the defendant and Sahil Uppal  
25 was not authorized by Citadel. They had no knowledge of it.

1 They weren't trading using money that had been provided to them  
2 by Citadel. They were trading with Ben Pu's -- I'm sorry --  
3 the defendant Ben Pu was trading with his own money in order to  
4 increase his own profits. It is simply not true to state that  
5 what the defendant was trying to do was for Citadel's benefit.

6 He and Sahil Uppal were not in the same group at the  
7 firm. They were not on the same projects. They were not  
8 authorized to work together on the projects that they were  
9 doing outside business hours on the defendant's own home  
10 computer system.

11 Your Honor, and because the defendant's crime was  
12 interrupted before it could come to completion, you know, the  
13 government found itself in a difficult place at the original  
14 sentencing in order to estimate the loss that the defendant  
15 intended to cause to Citadel. And it had used as a proxy for  
16 that intended loss the research and development costs to  
17 develop the trade secrets both for Company A and for Citadel.

18 Although the Seventh Circuit has come down with its  
19 decision and has offered more clarity in that area; however,  
20 reading their opinion there are several instances where it  
21 wasn't exactly clear what they intended to occur at  
22 resentencing, whether it would be a new hearing to establish  
23 what the loss, intended loss figure was, or whether they felt  
24 that there was no actual -- I'm sorry -- no intended loss that  
25 could be established under the facts.

1 Under the government's view, taking a conservative  
2 approach and in line with some Seventh Circuit precedent on  
3 scope of remand, has submitted that there is no intended loss  
4 figure that can be calculated. Now does that mean, your Honor,  
5 that this is neither a serious offense nor one that does  
6 deserve serious recognition by the Court?

7 While the figures that the government offered for  
8 intended loss before are not appropriate proxies for what the  
9 defendant intended to cause a loss to Citadel of, they are  
10 still relevant at sentencing, your Honor. The -- and in terms  
11 of establishing the value and how important these things were  
12 to the victims of the defendant's offenses, Citadel spent about  
13 \$10 million developing -- I'm sorry -- at least \$10 million  
14 developing the trade secrets that the defendant stole.

15 Likewise, Company A spent more than \$2 million  
16 developing trade secrets. These were incredibly important  
17 pieces of technology that these firms put together and were  
18 using, and they were operating in a market and an environment  
19 where secrecy is the number one factor that they can control  
20 and that they can use to their benefit to make money against  
21 other people who are using similar sophisticated technologies  
22 to trade. The defendant invaded that sense of privacy, and the  
23 government has offered to the Court a number of cases where  
24 other courts have recognized similar -- in similar  
25 circumstances where substantial invasions of privacy resulted



1 in substantial terms of imprisonment.

2 Now putting aside for the moment the loss that the  
3 defendant intended to commit, I do think it is relevant, your  
4 Honor, for the Court -- and one of the things that led the  
5 government to recommend a sentence of 18 months's incarceration  
6 -- was the scope of the defendant's obstruction of justice.  
7 The defendant destroyed numerous pieces of evidence. He took a  
8 USB drive that had an encryption code on it and claimed to have  
9 smashed it with a hammer so that no one could have access to  
10 it. He enlisted his co-defendant Sahil Uppal to help him move  
11 computers, approximately six computers, out of his apartment to  
12 a friend's apartment to hide them there to keep them outside of  
13 Citadel's knowledge and prevent them from collecting those.

14 And then when the defendant realized that Citadel was  
15 closing in, he had that friend take a number of those hard  
16 drives and dispose of them. That friend ultimately disposed of  
17 them in a sanitary canal. The defendant however was very --

18 THE COURT: Is that conduct consistent with being a  
19 collector?

20 MR. OTLEWSKI: It would appear not. Only with respect  
21 to the fact that the defendant did decide to keep one of his  
22 hard drives, and that one hard drive that he told his friend to  
23 keep still had trade secrets that belonged to Company A, the  
24 first victim of the defendant's theft of trade secrets.

25 What the defendant did, your Honor, was serious, and

1 sent Citadel on a mission. They had now then encountered --  
2 they had now encountered an employee they could no longer  
3 trust. Someone that they had trusted with very valuable trade  
4 secrets during the course of his employment, and an employee  
5 who, as the government set out in its government -- in its  
6 version of the offense, lied to Citadel when confronted about  
7 this. He had the opportunity to come to his employer, tell  
8 them, yes, I took these things. Yes, perhaps I took them for  
9 my own economic benefit. Instead he lied, said he didn't have  
10 anything.

11 Well, Citadel to its credit didn't believe the  
12 defendant and continued investigating. And that, your Honor,  
13 sent them to hire an outside law firm to handle the  
14 investigation. That caused them to hire forensic computer  
15 analysts to spend a significant amount of time going through  
16 both its data, the data that the defendant did turn over to  
17 Citadel, as well as to collect other electronic data that the  
18 defendant's friend ultimately disposed of in that sanitary  
19 canal. This was a victim doing everything it could to try to  
20 locate the trade secrets and to determine the scope of the  
21 trade secrets and theft that had occurred at its firm. The  
22 defendant didn't help them in any regard during that process.

23 And, your Honor, on this point, there is one thing  
24 that's important. When the FBI went and searched the  
25 defendant's apartment while after -- approximately a month

1 after -- a little over a month -- I'm sorry -- after he had  
2 been confronted by Citadel and after Citadel had ostensibly  
3 completed its internal investigation, the FBI went to the  
4 apartment, searched the apartment, and what did they find?  
5 They still found proprietary confidential business information  
6 related to Citadel in the defendant's apartment. Why is that?  
7 Because it tells the Court, it tells us, that the defendant was  
8 still holding onto things that he thought he could make a  
9 benefit of to himself from Citadel.

10 And now --

11 THE COURT: Are you saying he expected to gain from  
12 taking this intellectual property?

13 MR. OTLEWSKI: I believe he did intend to gain from  
14 it, your Honor. And I think that's what the evidence supports.  
15 And it also reflects on what the victim was faced with. The  
16 victim of this offense, one of the victims, Citadel, will never  
17 know exactly what the defendant stole, will never have the  
18 peace of mind that its trade secret isn't sitting in some other  
19 repository from the defendant. Every step of the way that they  
20 tried to investigate that, the defendant impeded them. And it  
21 wasn't even until -- it was only when the FBI searched the  
22 defendant's apartment with a warrant that they collected even  
23 more evidence that the defendant hadn't turned over to Citadel  
24 when approached numerous times during the investigation. And  
25 that's an important factor, I believe, for the Court to

1 consider in fashioning its sentence.

2 Now to the defendant's credit, while he has been in  
3 custody, it appears that he has taken the steps towards  
4 rehabilitation, your Honor. I do think it is important to  
5 note, however, for the record, the individuals from whom the  
6 defendant has sought letters of recommendation. And I received  
7 these yesterday, so I wasn't able to research all of these  
8 individuals, your Honor, but I'll take a moment and explain a  
9 few of them.

10 One of these individuals --

11 THE COURT: Well, let's make this point clear. The  
12 Court can't take into account post-judgment conduct.

13 MR. OTLEWSKI: That is correct under Peppers, your  
14 Honor.

15 THE COURT: Yes. Proceed.

16 MR. OTLEWSKI: And, your Honor, for instance, the  
17 defendant had a letter sent to the Court from Michael G. Grimm,  
18 who indicated that he was a member of Congress for  
19 approximately four years, that he was in the U.S. Marine Corps,  
20 and he was a former special agent of the FBI. However, what he  
21 didn't indicate, your Honor, was that he is a convicted felon.  
22 He committed tax fraud. And he acknowledged committing  
23 perjury, hiring illegal immigrants, and committing wire fraud.

24 Another individual named Spyros Panos, a doctor, wrote  
25 a letter. However, he failed to inform the Court that he been

1 convicted of healthcare fraud for faking surgeries over a five-  
2 year period.

3 Other individuals, your Honor, including --

4 THE COURT: With respect to those two individuals, are  
5 they or were they incarcerated when they wrote the letters?

6 MR. OTLEWSKI: They were, your Honor.

7 As well as Alexander Philipone (phonetic), another FCI  
8 inmate, who is convicted of conspiring to distribute methylene.  
9 Another individual Mather Waden (phonetic), who is also at the  
10 FC -- Federal Correctional Institute, who had been committed --  
11 convicted -- I'm sorry -- of food stamp fraud totaling  
12 approximately \$2 million. Christopher Pamovile (phonetic),  
13 convicted of drug smuggling. Kevin Bordman (phonetic), a pilot  
14 who stole approximately \$2.7 million. And the list goes on and  
15 on.

16 THE COURT: There is also a letter from the mother of  
17 the defendant.

18 MR. OTLEWSKI: There is, your Honor. And it is  
19 absolutely true, your Honor, that this defendant has a mother  
20 who loves him very much, and that family has endured extreme  
21 hardship with the loss of their son who is incarcerated.

22 From the facts though, your Honor, that mother's  
23 circumstance does not seem exceptional or outside what other  
24 defendants who are in similar situations would face.

25 And what this does tell the Court is that this

1 defendant has caused much of the problem he is facing. It was  
2 the defendant's choices, your Honor, who put him in this  
3 situation. It was defendant's own decisions and theft that put  
4 him in prison and is causing this hardship. There is no doubt  
5 that his mother is suffering and would like her son back;  
6 however, he has committed a very serious crime on two occasions  
7 against both of his employers stealing very valuable trade  
8 secrets.

9 THE COURT: As the Court reviews these letters, the  
10 Court is well aware of the Vrydolyak, United States Vrydolyak,  
11 and the recent Seventh Circuit opinion dealing with letters  
12 considered by the sentencing judge in that case. So the Court  
13 must exercise discretion and give appropriate weight to the  
14 letters. And I want to underscore that I indeed have read the  
15 Vrydolyak case several times.

16 In any event, please proceed.

17 MR. OTLEWSKI: Your Honor, on that I'm going to rest.  
18 It is the government's view that a sentence of 18 months's  
19 imprisonment, which is at the high end of the guideline range,  
20 but is less than the originally imposed sentence by this Court  
21 of 36 months's imprisonment, is appropriate under both the  
22 guidelines and the relevant 3553(a) factors.

23 THE COURT: Well, when imposing the last sentence, the  
24 Court departed from the sentencing guideline range. Departure  
25 is the wrong term to use. However, the guidelines are not

1 mandatory but serve as guides to the Court. But the Court was  
2 well aware of the sentencing guideline range and determined,  
3 based upon the totality of the evidence, to impose a sentence  
4 of 36 months and three years supervised release.

5 All right. So the government's position is to impose  
6 a sentence of 18 months. Is that right?

7 MR. OTLEWSKI: Yes, your Honor.

8 THE COURT: All right. The defense may argue its  
9 position.

10 MR. FLACHSBART: Your Honor, with your permission I'd  
11 like to address just a few of the factual matters and some of  
12 the pieces that Mr. Otlewski just addressed, and then turn it  
13 over to Ms. Gurland to do the 3553 factors.

14 THE COURT: Proceed.

15 MR. FLACHSBART: Thank you.

16 I think one of the things -- I heard a lot of  
17 description of the conduct from Mr. Otlewski. And we're not  
18 here to determine culpability really. Ben pled to the conduct.  
19 He admitted his wrongdoing. He understands that it is his  
20 actions that brought him here today and that have had him  
21 incarcerated for the last 12 months. We're not here really to  
22 discuss --

23 THE COURT: Let me say something here.

24 MR. FLACHSBART: Certainly.

25 THE COURT: You may decide to call your client Ben,

1 but the Court's position is that I will use the more formal  
2 name of Mr. Pu.

3 MR. FLACHSBART: That's fine, your Honor, and I'll go  
4 by that.

5 THE COURT: Please proceed.

6 MR. FLACHSBART: So Mr. Pu certainly understands that  
7 he is here as a result of his actions and understands the  
8 seriousness of the acts. All of the conduct that Mr. Otlewski  
9 has described is built into the guideline range. We have a  
10 base offense level. We have an increase for use of a special  
11 skill. We have an increase for use of -- we have an increase  
12 for sophisticated means. Those address the seriousness of the  
13 underlying acts.

14 We also have a two-point increase for obstruction of  
15 justice specifically pled to by the defendant when we entered  
16 into the plea agreement. All of these things are included.  
17 And the government seems to impute that there was some plan to  
18 do it a little bit without too much commitment. But they seem  
19 to impute that there was some kind of a supposed plan that  
20 involved something more than what Mr. Pu already admitted and  
21 pled guilty so as recited numerous times in our paper that we  
22 submitted, your Honor, Monday. Your Honor found previously  
23 that the conduct that Mr Pu entered into began and ended with  
24 what he did in this case.

25 The government has offered, your Honor, today no new



1 evidence supporting anything beyond that, and so to find an  
2 increase -- or to move towards the higher end of the sentence  
3 simply makes no sense in that context.

4 I want to address real briefly the substantial --

5 THE COURT: Well, on that particular point --

6 MR. FLACHSBART: Certainly, your Honor.

7 THE COURT: -- the Seventh Circuit have quoted the  
8 Court. And that statement by the Court was extemporaneous. It  
9 was not drafted in advance. It was the Court's reflection of  
10 what it had heard up to that point.

11 Since this matter has been returned to the District  
12 Court for resentencing as specifically laid out in the Seventh  
13 Circuit opinion, the Court has had an opportunity to read and  
14 reread the government's submission of September 18, 2014, which  
15 includes conversations between the defendant and Mr. Uppal.

16 But you may go on with your argument.

17 MR. FLACHSBART: Certainly. I have seen those chat  
18 logs, your Honor, and I have seen a bunch of -- there is  
19 obviously a great number of chats in between these two young  
20 men. Much of it amounting to, I think, sound and fury  
21 signifying really nothing.

22 There was no -- when our expert -- and we have  
23 submitted his declaration to your Honor, and I'd invite you to  
24 consider it, of course. The -- when our expert analyzed the  
25 material, he found critically lacking a few key things that he

1 would have expected to see were there some plan to do more. He  
2 saw that the Company A material had been retained but never  
3 used, never touched, nothing but stored in the hard drive.  
4 That the copy that was on the hard drive when it was seized was  
5 a company from Mr. Pu's work space from the company when he was  
6 still working there. It didn't appear to have been accessed in  
7 any way.

8 When he looked at the Citadel material, the Citadel  
9 material critically had not the same level of code present.  
10 The Citadel material did not have the key algorithms which were  
11 necessary to make it valuable in a competitive atmosphere. It  
12 contained only outputs and a few pieces of code that were, also  
13 like the Company A material, never used. He didn't see any  
14 attempts to reverse engineer. He didn't see any attempts to  
15 compile. He didn't see any of the things that would have been  
16 needed for them to make an enterprise.

17 And I think --

18 THE COURT: Well, so is your expert saying that if the  
19 defendant had gone further with what he had, that he would have  
20 failed?

21 MR. FLACHSBART: That he would have left footprints.  
22 That he was going in that direction, and there just weren't  
23 any.

24 THE COURT: That with what Mr. Pu had accumulated,  
25 based upon whatever it is the expert looked at, that Mr. Pu

1 would not have been successful in his endeavor using the  
2 information he had taken from A and from Citadel?

3 MR. FLACHSBART: I believe that's correct, your Honor.

4 THE COURT: So he would have failed in his effort?

5 MR. FLACHSBART: Yes, that he could not --

6 THE COURT: Does that make a difference?

7 MR. FLACHSBART: I don't believe that whether he would  
8 have been successful or whether he would have failed makes a  
9 difference, your Honor, but whether he had a plan to do more.

10 THE COURT: Well, the case law says if the scheme  
11 fails or succeeds is not the issue.

12 MR. FLACHSBART: I agree with your Honor.

13 But what we're saying is that there is no footprints  
14 that there even was a serious attempt to do more. There was  
15 just nothing there. There was no -- critically, in addition to  
16 that, there was no investigation of the proper hardware that  
17 would be necessary to make a high frequency trading platform  
18 work, which is the kind of thing that both Mr. Pu and Mr. Uppal  
19 would have known they needed and there simply was neither of  
20 the acquisition of the hardware nor any research about getting  
21 that kind of hardware. It is just they weren't trying to make  
22 an enterprise.

23 THE COURT: They were recruiting, were they not?

24 MR. FLACHSBART: They were not recruiting. They did  
25 discuss at one point. You know, Mr. Uppal at least discussed

1 who he would get. But they did not actually go recruit  
2 anybody. There is no evidence showing that they recruited  
3 anyone. The only evidence is chats between them.

4 In fact, in our submission, your Honor, we cite the  
5 deposition of Mya Shed (phonetic) from the civil case, in which  
6 she -- an outside witness with, you know, no dog in this hunt,  
7 confirmed that she had reached out to Ben to see if he was  
8 willing to leave Citadel, and he was not. He was happy in his  
9 work there. The --

10 THE COURT: He was being paid --

11 MR. FLACHSBART: Pardon me?

12 THE COURT: He was being paid a hundred thousand  
13 dollars a year in salary, and there were bonuses that were  
14 substantial. And while he was on the payroll at A and at  
15 Citadel, he was accumulating much of the information that he  
16 eventually took. In other words, his employer was not getting  
17 full value of the services.

18 MR. FLACHSBART: I don't contend, your Honor, whether  
19 his employer was getting full value of his services. Certainly  
20 for people in his industry, although \$100,000 certainly seems  
21 like a lot to me, that is at the low end of their compensation  
22 schemes. I mean, it is -- he was a relatively low-level  
23 employee.

24 And I don't contend -- there is -- we're not arguing  
25 -- again we're not arguing whether or not what Mr. Pu did was a

1 crime. We're not arguing whether he was improperly subject to  
2 this Court's sentence. He's properly being sentenced. The  
3 only thing that we're arguing about is where that sentence  
4 should lie in the range that we find under the guidelines. And  
5 all that we're saying today to your Honor is the guideline  
6 range properly reflects the conduct in this case. It is all  
7 included. It is baked into the guideline range.

8 THE COURT: I understand your position, and it is a --  
9 there is a great deal of merit to what you are arguing.

10 MR. FLACHSBART: Okay.

11 THE COURT: Please proceed.

12 MR. FLACHSBART: Thank you, your Honor.

13 Then the only other point that I -- the only other  
14 point that I would like to address, and then I'll talk briefly  
15 about a couple of the other things that Mr. Otlewski said  
16 before I turn it over to Ms. Gurland, is the substantial  
17 invasion of a privacy interest, which the government has  
18 injected into the proceeding at this point, that is not  
19 something that was raised at the original sentencing hearing,  
20 and it doesn't really seem to apply in this particular case.

21 The kind of records that are typically the subject of  
22 a substantial invasion of a privacy interest concern are  
23 medical, educational or financial records. We're talking about  
24 things that are personally embarrassing to have out, that kind  
25 of thing. We're not talking about the trade secrets, that are

1 the very basis of the complaint here, which are the very  
2 conduct that is in fact already agreed to. It was the wrongful  
3 taking of those trade secrets which are the basis of the  
4 sentencing guideline range in the first place. So we don't  
5 think it is appropriate to use the back door and increase into  
6 the high end of the range for a first-time offender from  
7 a -- from that particular set of circumstances.

8 And obviously we laid this out in our brief. But if  
9 we look at the cases, you know, we're talking about, you know,  
10 real but intangible loss in the form of embarrassment and the  
11 appearance of incompetence, which certainly isn't the case  
12 here. These software packages are still being used, to our  
13 understanding at least, by Citadel and Company A to this day.  
14 And they are making a lot of money with them. There hasn't  
15 been any particular embarrassment to any of these companies.  
16 Mr. Pu has served time in prison and has made efforts to leave  
17 the financial sector and do good in the world.

18 So I just want to address a couple of the points that  
19 Mr. Otlewski made, and then I'll turn it over to Ms. Gurland.  
20 Mr. Otlewski said something along the lines of just collecting  
21 things isn't a crime, and we certainly agree with that. The  
22 only point of Mr. Pu's collection on this case is --

23 THE COURT: Well, you can't collect somebody else's  
24 property.

25 MR. FLACHSBART: Absolutely, your Honor, and that's

1 the conduct that we agree is wrongful, and that's the conduct  
2 that's baked into the Sentencing Guidelines.

3           There was a -- there is a -- Mr. Otlewski made a  
4 reference to how Mr. Pu did nothing to assist Citadel in their  
5 investigation, and that's just not accurate. He also made a  
6 reference to how when the FBI seized material at Mr. Pu's  
7 house, they found additional trade secret material. Mr. Pu --  
8 I'm not -- I'm certainly not going to say that what Mr. Pu did  
9 was full and complete disclosure to Citadel of the trade  
10 secrets that he had taken. That certainly was not the case.  
11 We have agreed with that, and that's why we pled to the  
12 two-point increase for obstruction of justice.

13           But what he did do when he first was approached by  
14 Citadel was he provided passwords to certain of his hard  
15 drives, and he provided them with material. Did he provide  
16 them with everything he had? He did not. He was nervous about  
17 his own personal information. He made very bad mistakes and  
18 transferred that information to someone else who put them in  
19 the canal. A hundred percent we agree that that was a mistake.  
20 And just not a mistake, but bad acts, and that that resulted in  
21 the increase of two points. But he did make some efforts to  
22 disclose to Citadel what had been taken.

23           When Mr. Otlewski refers to the additional trade  
24 secret material that was located in Mr. Pu's home, what he is  
25 talking about is one email, a paper printout of an email, that

1 was in among hundreds of other financial papers and work  
2 material of Mr. Pu's. We're not talking about like Mr. Pu had  
3 held on to a hard drive with a copy of any of Company A's code  
4 or any of Citadel's trade secret code. Not the -- the critical  
5 guts of what we're talking about here in this case. He didn't  
6 have anything --

7 THE COURT: Well, the hard drive was broken with a  
8 hammer.

9 MR. FLACHSBART: There was a -- a USB. But Mr. Pu  
10 also surrendered hard drives. And because of the -- sort of  
11 the nature of Mr. Pu's data storage, most of the material that  
12 eventually became the subject of this case was in fact handed  
13 over by Mr. Pu to Citadel.

14 THE COURT: Who extracted the material from the canal?

15 MR. FLACHSBART: That was Citadel, your Honor.

16 THE COURT: Who?

17 MR. FLACHSBART: That was Citadel.

18 THE COURT: All right.

19 MR. FLACHSBART: I don't have anything further, unless  
20 your Honor has some questions for me.

21 THE COURT: No, I'll just give Mr. --

22 MR. FLACHSBART: Well, I am going to hand it over to  
23 Ms. Gurland.

24 THE COURT: Yes, but before you do, I want to give the  
25 government an opportunity to reply to what counsel has said.



1           MR. FLACHSBART: Okay. That's fine. Thank you, your  
2 Honor.

3           MR. OTLEWSKI: Your Honor, I'll be brief. To  
4 defendant's point about his efforts to provide some information  
5 to Citadel after he was confronted about the theft, it is a  
6 classic move that this Court has probably seen in a number of  
7 other cases involving fraud, theft, and deception, where  
8 someone hands over a little bit, trickles out some information,  
9 some of the property to return in the hopes that that appeases  
10 an individual, hopes that it sets them at -- sets them off to  
11 think that that's the entire world of information, while  
12 keeping for their own benefit the real jewels or the real  
13 benefit of whatever it was that they stole. It is, like I  
14 said, a classic move that this defendant did, handing over some  
15 hard drives that contained some small bits of information, but  
16 holding onto critical pieces of information on hard drives that  
17 contains thousands of files that belonged to Citadel and the  
18 other company, Company A, is not at all any effort to help  
19 Citadel.

20           It was an effort designed to put -- to send them home  
21 thinking that they had received everything and allow the  
22 defendant to keep what he had. He wouldn't have given it to a  
23 friend. He wouldn't have had that friend try to hide it when  
24 Citadel was continuing to pursue him if he wasn't trying to  
25 keep it out of Citadel's hand.

1           THE COURT: Well, this wasn't just a friend, this was  
2 a co-conspirator, was it not?

3           MR. OTLEWSKI: It was, your Honor.

4           And the other point --

5           THE COURT: What happened to Mr. Uppal? Uppal?

6           MR. OTLEWSKI: Uppal, and then there was this other  
7 individual --

8           THE COURT: What was the disposition with respect to  
9 Mr. Uppal?

10          MR. OTLEWSKI: He received a sentence of probation,  
11 your Honor.

12          THE COURT: All right.

13          MR. OTLEWSKI: His plea --

14          THE COURT: He --

15          MR. OTLEWSKI: I'm sorry.

16          THE COURT: All right. A judgment of conviction has  
17 been entered against him.

18          MR. OTLEWSKI: That's correct, your Honor.

19          THE COURT: All right. Please proceed.

20          MR. OTLEWSKI: And, your Honor, with respect to the  
21 other point that defense counsel raised at the very end about  
22 this additional piece of information that was at the  
23 defendant's residence when the FBI searched that apartment, I  
24 want to point out a few things. One, I never argued that it  
25 was a trade secret. I identified it as confidential business

1 information.

2 THE COURT: What agreement did Mr. Pu have with  
3 Company A and Citadel with respect to confidentiality?

4 MR. OTLEWSKI: There were a number of policies that  
5 the defendant signed both with -- I'm sorry -- primarily with  
6 Citadel in writing about non-disclosure and confidentiality.

7 The protocols at Company A were more informal. But  
8 the culture of secrecy and the culture of confidentiality  
9 existed at trade -- at that other firm, Company A, and they  
10 worked with their employees to ensure that they knew to keep  
11 their information secret.

12 And on that point, your Honor, what the defendant had  
13 in his apartment, the defense is right, that it wasn't another  
14 hard drive. What it was though was an email between very  
15 senior executives, individuals at the top of the pyramid at  
16 Citadel, that was printed out from a computer, had handwriting  
17 on it, and was in the defendant's apartment. Now whose name  
18 was it on that email as being to, from or CC'd, the defendant's.  
19 What does that tell the Court and what can you infer from that?  
20 That defendant stole it. He found it either on someone's  
21 computer or near their work station and stole that confidential  
22 business information.

23 That email may not have had a trade secret, but it  
24 disclosed strategy from the business about its future plans.  
25 Very important information that someone who is looking to build

1 a system could use to the detriment of Citadel. It was  
2 important to Citadel. The defendant knew it, he took it, and  
3 he kept it, and never gave it back.

4 THE COURT: Does that complete your reply?

5 MR. OTLEWSKI: It does, your Honor. Thank you.

6 THE COURT: Okay. With respect to 3553 factors, you  
7 may proceed.

8 MS. GURLAND: Thank you, your Honor.

9 As the Court has already observed this morning,  
10 especially in the context of a resentencing under the case of  
11 United States versus Pepper, 562 U.S. 476, the Court is to  
12 consider the fullest information possible concerning the  
13 defendant's life and circumstances, and that includes  
14 specifically the defendant's conduct from the exact day of the  
15 sentencing up until present day.

16 THE COURT: Yes.

17 MS. GURLAND: And so I would like to address some of  
18 those factors specifically for the Court.

19 At Mr. Pu's first sentence, this Court stated that  
20 Ben's having left the world of finance and gone into the work  
21 of teaching computers to children was a significant factor to  
22 the Court. The Court said to Ben in addressing -- sorry -- in  
23 addressing Mr. Pu, the Court said, you have taken affirmative  
24 and positive steps in terms of trying to help others, and in  
25 this situation children, using your expertise and your skills

1 to help them, and that is something that is important to the  
2 Court because what it suggests is that you are well on your way  
3 toward rehabilitation.

4 THE COURT: Is that a quote from the opinion?

5 MS. GURLAND: This is a quote of the transcript of the  
6 sentencing hearing.

7 THE COURT: Is it contained within the opinion of the  
8 Seventh Circuit?

9 MS. GURLAND: It was not in the Seventh Circuit  
10 opinion. It was cited in our papers.

11 THE COURT: All right. The reason I bring that up is  
12 I didn't see it in the opinion, but I do recall specifically  
13 saying that. Please proceed.

14 MS. GURLAND: Thank you, your Honor.

15 So as of that time, the record before the Court and  
16 the record that was presented to the Court when the Court made  
17 those observations, was that Ben had, from the time that he  
18 left Citadel, he had left the world of finance and he had gone  
19 into teaching computers to children. And there were at that  
20 time a number of letters submitted to the Court by the parents  
21 of the children who had taken his courses. None of them  
22 felons. And they did write to the Court about Ben's kindness,  
23 his compassion, and really that he was actually very much a  
24 mentor for the children in his community, with his hard work,  
25 his diligence, his skill, but also his kindness and his

1       compassion, and --

2               THE COURT:   He is doing work in the community he finds  
3       himself in now.   That's similar, isn't it?

4               MS. GURLAND:   That's right, your Honor.   That's what I  
5       wanted to tell your Honor was that when your Honor observed  
6       that Ben -- sorry -- that Mr. Pu was well on the way to  
7       rehabilitation, your Honor was exactly correct.   And what I  
8       want to talk now about specifically is what happened from the  
9       very day in January that the Court sentenced Mr. Pu and present  
10      day.

11              And it started with Mr. Pu returning to the Boston  
12      area in which he lived and returning his teaching and the work  
13      that he was doing with the children.   Now what we do understand  
14      is that Mr. Pu, for all of his exalted position or his, you  
15      know, significant position with Citadel, he really was quite a  
16      young man.

17              THE COURT:   Just a minute.   Let me also make sure --  
18      Mr. Fulbright, is Mr. Pu hearing all of this?

19              THE CLERK:   Mr Pu, you're still here?

20              THE DEFENDANT:   It is a little bit difficult to hear,  
21      but I'm doing my best.

22              THE COURT:   Okay.   Please speak into the microphone if  
23      you would.

24              MS. GURLAND:   Yes, your Honor, I will do that.

25              THE COURT:   I just wanted to make a record on that

1 point. Please proceed.

2 MS. GURLAND: So from the time that the Court made the  
3 observation that Mr. Pu was well on the way toward  
4 rehabilitation, Mr. Pu has proven the Court to have been  
5 exactly right. When the Court graciously gave Mr. Pu three  
6 months to wrap up his teaching in Boston, we had asked for a  
7 three-month surrender time, and the Court gave us the three-  
8 month surrender time so that Mr. Pu surrendered in May.

9 So between January and May, Mr. Pu had time to do a  
10 lot of things, which included reflecting on what for him, as  
11 quite a young man, was a very scary and devastating fact which  
12 was that he was soon going to have to report to prison. And  
13 what Mr. Otlewski talked about were some choices that were very  
14 bad choices that Ben made in 2011 and 2010 when he committed  
15 the conduct that was the subject of this case.

16 But what I'd like to talk about, your Honor, are the  
17 choices and very real choices that Ben made after the time that  
18 he was sentenced and the time that he reported to prison from  
19 January to May. And what he decided, the choice that he had  
20 made, your Honor, was to not crawl up under the covers, not to  
21 let fear paralyze him, but he chose to throw himself into  
22 helping the children that he was teaching, to whom he was  
23 teaching computers, and really provide a wonderful foundation  
24 for them to have summer internships and to have work to do, and  
25 to have substitute instructors. He threw himself into doing

1 exactly what needed to be done in order for those children to  
2 whom he was mentoring and teaching to be able to continue on in  
3 what they were doing in his absence. And I submit to your  
4 Honor that given Ben's age and given the difficulties  
5 psychologically of what he was on confronting, both with what  
6 he had pled guilty to and what was surely going to face him,  
7 which was the prison sentence, doing that was extraordinary.

8 I want to read from a letter that I'm sure the Court  
9 has read, from Tracey Hiback (phonetic). Tracey Hiback is a  
10 parent. She does not have any felony convictions. And she's a  
11 parent of a 16-year-old student that Ben was teaching. Tracey  
12 wrote a letter to the Court April 15th of this year. And she  
13 said she was struck -- she was impressed with -- and I'm  
14 quoting now from her letter -- with the grace and dignity  
15 throughout this process. In particular, what I was struck by  
16 was Ben's work ethic and his selflessness. Ben seemed to push  
17 himself to work harder than ever in order to leave no stone  
18 unturned in preparing for the welfare of his students and  
19 fellow employees of KByte Computer Science Academy. For  
20 example, he worked very hard to develop contacts with  
21 researchers and business people at our local community to  
22 establish summer internship and research opportunities for his  
23 computer science students, all the while knowing that he would  
24 not be there to see the students begin the work. Clearly he  
25 had their best interests in mind, and he did a wonderful job



1     laying the groundwork for what became a successful summer  
2     program for these lucky students.

3             In addition Ben concentrated on teaching during the  
4     same period. He trained other teachers. And even more  
5     ambitiously Mrs. Hiback writes, he finished work on a learning  
6     platform that presented lectures on Java programming in an  
7     audio set format. He then posted this online computer tool  
8     online for his students to use, but really for anybody to use  
9     free of charge. And that was, of course, a wonderful benefit  
10    to his student and was a benefit to others who might have found  
11    it on the internet and made use of it. So in a sense almost  
12    sort of the opposite conduct of the conduct that landed him in  
13    these problems in the first place.

14            And after May, your Honor, when Mr. Pu reported to  
15    prison, he continued teaching. And this time he didn't find  
16    himself any more in a community of 16 year olds that needed  
17    computer programming services, he found himself, as  
18    Mr. Otlewski has pointed out, in a community of people who were  
19    in prison. And because they are in prison, I think we're not  
20    surprised to learn that they had committed felonies because  
21    otherwise they shouldn't have been there. But these letters --

22            THE COURT: Touche.

23            MS. GURLAND: Thank you, your Honor.

24            These letters that were submitted to the Court, if the  
25    implication is that they shouldn't have anything to say or that

1 they don't have any credibility because they are felons, I can  
2 accept that maybe if they engaged in acts that included  
3 duplicitiousness that there should be some accounting for that.  
4 However, your Honor, all of the letters are -- they echo the  
5 same sentiment. And there is some reliability in that because  
6 time and time again what they are writing to the Court is that  
7 Mr. Pu was helpful, that he was a teacher, that he was a  
8 mentor, that he was patient. And maybe it is not so surprising  
9 that given his intellectual capacity that Mr. Pu would be able  
10 to help people study for the GED or that he would be able  
11 to help them to write letters to their families, as many of the  
12 inmates reported that he did.

13 But what I think is extraordinary about Ben's conduct  
14 is that many of the letters write that he did this with  
15 tremendous patience and humility and respect. And that he  
16 didn't seem to be passing judgment on the other inmates because  
17 perhaps they weren't as intellectual as he was. He was  
18 compassionate. He was patient. And he served for them as a  
19 mentor, to a point where one of the inmates, Terry McClegg  
20 wrote, I think very poignantly of Mr. Pu. He is a true light  
21 in the midst of some dark and trying times.

22 And I think that the fact -- and your Honor mentioned  
23 the Vrydolyak case, and I think one of the things that comes to  
24 my mind is that the Seventh Circuit was saying, you know, if  
25 you find yourself in a circumstance of having huge amounts of

1 money and being able to be a benefactor to so many, maybe it is  
2 not such a big deal, but you are giving charitable  
3 contributions, and maybe you take that with a grain of salt.

4 But I think in Ben's case, your Honor, something very  
5 important to consider is that Ben found himself with the assets  
6 that he had, but he was, unlike Mr. Vrydolyak, who is an older  
7 person at the time of his crimes and his sentencing, Mr. Pu is  
8 a very young person. And as your Honor pointed out at the  
9 first sentencing hearing, while sophisticated in some ways,  
10 very unsophisticated in the ways of the world.

11 So I think that you have to consider that that is the  
12 person who was able to rise to the occasion, your Honor. And  
13 after being sentenced to a 36-month jail term, left and didn't  
14 -- left this courtroom and turned around and set about the work  
15 of preparing adequately and -- more than adequately in an  
16 exemplary fashion for his students, and then in confronting  
17 what for him was a terrifying experience going away to prison,  
18 confronted that experience with kindness and charity and  
19 generosity to all of the other inmates or the ones at least we  
20 know who wrote on his behalf, and really made a better world  
21 and a better community for the people that were serving time  
22 with him. And I think particularly when you consider his age  
23 and his level of inexperience in anything like the Criminal  
24 Justice System, that that took a tremendous amount of  
25 character, and I think that it would argue that he, as your

1 Honor has observed previously, is well on the way toward  
2 rehabilitation.

3           Something that Sui Lee (phonetic), who continues to  
4 be, was and is Mr. Pu's girlfriend, wrote about is that he has  
5 done a lot of reading. He has focused on positive things. He  
6 has done a lot of reading since he has been in prison. And the  
7 things that he is reading, he is reading about how to become a  
8 better teacher, how to communicate information in a better more  
9 successful manner to his students. So not only has he spent  
10 time while in prison working with the other inmates helping  
11 them, he is trying to lay the groundwork and the foundation for  
12 himself so that when he finally is able to return to his  
13 students and his teaching of children in computers, that he is  
14 able to do that in a way that is even more beneficial to the  
15 children.

16           So I think that all of those things about Mr. Pu's  
17 post-sentencing conduct should rightfully be considered by the  
18 Court. And I think that these factors, together with the other  
19 factors that we have talked about today, would argue for a  
20 sentence of time served. A sentence of time served, your  
21 Honor, is not in the operation of the way that the good time  
22 credit works. It would actually not be at the low end, at the  
23 very low end of the sentence. Because although Ben has served  
24 more than 12 months in prison, in order to actually serve more  
25 than 12 months with 85 percent -- with a 15 percent discount, I

1 should say, for good time, he would actually have to have been  
2 sentenced to approximately 14 months. Because once you account  
3 for the 15 percent discount, it would basically -- to sentence  
4 Ben to time served would be a guideline sentence, and it would  
5 be approximately a 14-month sentence. And that's what we're  
6 asking for today, your Honor.

7 And just specifically on other 3553(a) factors that  
8 the government had cited. On specifics and general deterrence,  
9 on specific deterrence, you know, this ordeal has gone on for  
10 Mr. Pu for five years. He lost his job. He lost the  
11 opportunity to ever work in finance again. He lost the respect  
12 of his peers. He lost certain standing in the community.  
13 There was five years of tremendous uncertainty in the case  
14 because his guideline range was 87 to 104. Of course the Court  
15 departed significantly from that. But in confronting the  
16 day-to-day reality from 2011 up until 2015 when he was  
17 sentenced, Mr. Pu certainly had no guarantee that he wasn't  
18 going to have what might have been sort of a life-altering  
19 sentence. And he dealt with that uncertainty. And then he --  
20 we have not spoken about this very much at this sentencing, but  
21 he was in a very debilitating car crash, such that physically he  
22 is limited. And both being a young person and being physically  
23 limited made going to prison a horrifying experience for him.

24 THE COURT: His mother discussed that in her letter to  
25 the Court.

1 MS. GURLAND: Thank you, your Honor.

2 So for all of those reasons, Ben himself has been  
3 through a considerable amount of punishment in this case. And  
4 I don't think that it would denigrate respect for the law nor  
5 do I think that it would be unfair nor do I think it would not  
6 be enough of a deterrent to others if anybody could see what  
7 the result was of Ben's conduct because the results for Mr. Pu  
8 of his conduct have been nothing short of devastating. And I  
9 don't believe that any further punishment is warranted in this  
10 case to either send a message to Ben, who would never find  
11 himself in this circumstance again, nor is it necessary to send  
12 a message to others because what has already happened to Ben  
13 tells people loud and clear that they must not engage.

14 In terms of respect for the law, your Honor, all of  
15 the same reasons exist for leniency as existed at the time of  
16 the original sentence. And indeed many more reasons exist  
17 today because now we have had an ability to see what Mr. Pu was  
18 going to do with the time from the time of the sentence and to  
19 present day. And I would submit to your Honor that in all of  
20 those aspects, Mr. Pu has done more than just perform  
21 adequately, he has done more than just survive, Mr. Pu has  
22 truly excelled in every opportunity that has been given to him,  
23 to be compassionate, to be helpful, and to show good character,  
24 he has done that, and he has done that to an extraordinary  
25 level.

1           In terms of unwarranted sentencing disparities, your  
2 Honor, there was something in the government's brief in that  
3 section in which they argue that six of the seven defendants in  
4 other trade secret cases have received below guideline  
5 sentences. They took some objection to that. I would submit  
6 to your Honor, the unwarranted disparity factor is for just  
7 that. It is to prevent defendants from being sentenced to  
8 different, to widely divergent outcomes but similar conduct.  
9 But I would submit that Mr. Pu is different from the defendants  
10 in all of those cases, even defendants who received below  
11 guideline sentences because --

12           THE COURT: You're saying his conduct is different or  
13 is he different as an individual?

14           MS. GURLAND: Both of those things are accurate, your  
15 Honor. Although I don't have full information about those  
16 defendants, there is two things I know. One is that in each of  
17 the cases that we cited in our brief, those individuals put the  
18 government to their proof and went to trial. They did not do,  
19 as Mr. Pu did, and come forward and say, I did it, I took trade  
20 secrets, and I obstructed justice besides. They didn't do  
21 that. They didn't admit their misconduct, and they were  
22 instead found guilty after trial.

23           In addition, they went and approached competitors and  
24 asked for huge sums of money to hand over trade secrets of  
25 their employer. And there is nothing like that in this case.

1 Ben did no such thing. There is no evidence or suggestion of  
2 any of that. In addition, your Honor, we are actually seeking  
3 an in guideline sentence. We are not seeking a below guideline  
4 sentence because at this juncture to sentence Mr. Pu to time  
5 served would be, as I had mentioned, the approximation of a  
6 14-month sentence.

7 So, your Honor, I will conclude by mentioning that --  
8 or sharing with the Court my sincere gratitude for the Court's  
9 having carefully read and gone through the material and  
10 listened to our arguments now not once but twice. I believe --

11 THE COURT: Well, you can stop there. Gratitude is  
12 not the issue. Continue with your argument.

13 MS. GURLAND: I believe that Mr. Pu should be  
14 sentenced to time served. He has endured significant,  
15 significant punishment. The punishment has been enough. I  
16 respectfully ask this Court to sentence him to time served and  
17 allow him to come back to his community and continue being the  
18 teacher, the mentor, and the rehabilitated individual that he  
19 is and has become. Thank you, your Honor.

20 THE COURT: The government may reply.

21 MR. OTLEWSKI: There is nothing further from the  
22 government, your Honor.

23 THE COURT: Mr. Pu, are you with us?

24 THE DEFENDANT: Yes.

25 THE COURT: Can you hear me, Mr. Pu?



1 THE DEFENDANT: Yes, I can hear you.

2 THE COURT: You have the right to make a statement  
3 before the sentence is imposed. You also have the right to  
4 remain silent, which means to say something. If you do wish to  
5 speak, this is your opportunity to do so the.

6 THE DEFENDANT: Well, normally if I was sitting next  
7 to my attorneys, I would ask them what they recommend.

8 THE COURT: Well, I'll step out of the room for a  
9 couple minutes, and you can do that.

10 MR. FLACHSBART: You don't need to do that, your  
11 Honor.

12 THE COURT: I'll step out.

13 (Brief recess.)

14 THE COURT: Mr. Pu, have you had an opportunity to  
15 confer with your attorneys?

16 THE DEFENDANT: Yes. I'm going to go forward with  
17 making a statement.

18 THE COURT: As I said before, you have a right to make  
19 a statement if you choose to do so. You may proceed.

20 THE DEFENDANT: Okay. Thank you, your Honor.

21 First, I want to express my sincere regret for the  
22 actions I took that led me to this case. And I understand that  
23 the prosecutors say that the punishment is not yet enough, but  
24 with respect I disagree. This started for me in 2011. I have  
25 lost -- my family suffered. I have been charged with a major

1 felony crime. I have served over a year in prison. It has  
2 been absolutely devastating to me and my family. And during  
3 that time in prison, I am trying my best, trying to work on my  
4 future. And by that I mean to learn, keep learning, keep  
5 bettering myself, and also to understand how to be a better  
6 teacher for other people, for young people, for example. That  
7 is what I plan to return to when I am released.

8 So if your Honor would agree to allow me to return  
9 home to work, I will first try to make up to my family, my  
10 girlfriend. I couldn't have made it this far without them.  
11 And then I will try to use my time teaching, help young people,  
12 and help kids. I hope that -- you know, really very inclusive  
13 lives, and I would never do the actions that put me in this  
14 position. So, yes, thank you, your Honor, for all your time.  
15 Thank you for the attention you have brought in this case, both  
16 now and also, you know, in January last year. That's all I  
17 have to say. Thank you.

18 THE COURT: Do you want to say anything about Citadel  
19 or Company A?

20 THE DEFENDANT: I thoroughly apologize for my actions.  
21 I don't entirely believe that I agree with the severity of the  
22 government characterizing my intent. I really did not believe  
23 I was harming them at that time as much as they claim they  
24 thought I was. I really made a grave mistake in that respect.  
25 In hindsight a lot of my actions I wish I could take back. I'm

1     sorry for what I caused. I'm sorry for the cost. I will do my  
2     best going forward to make the world better in that regard.

3             THE COURT: Do you want to say anything further?

4             THE DEFENDANT: No, your Honor, that's all I have to  
5     say.

6             THE COURT: Fortunately for Mr. Pu, the Bureau of  
7     Prisons had the presentence investigation report, which was  
8     very comprehensive and very well done by an experienced  
9     probation officer. And they made a very appropriate job  
10    placement to put Mr. Pu into a position, once again, to work  
11    with computers. So he left the computer world as a free person  
12    and returned to the computer world, to a certain extent, as an  
13    incarcerated individual. Fortunately for him he didn't end up  
14    in the kitchen or making furniture. He was in a position to  
15    use his skills to his personal advantage and well beyond that  
16    to the advantage of the other inmates with whom he came in  
17    contact.

18            The letters by those individuals should be and will be  
19    given appropriate weight. They appear to be sincerely written.  
20    And so I will take into account those letters as well as the  
21    letter of the mother of Mr. Pu, who points out, again, the  
22    difficulties he has had over a period of time since a terrible  
23    accident that he was involved with.

24            And so the Court has looked at all the 3553 factors.  
25    They are well developed by counsel in this case. One key point

1 is the gravity of the conduct of the defendant. What is it  
2 that he did? And that is clear in terms of what he pleaded to  
3 and the factual basis for his plea of guilty. His conduct was  
4 very grave in terms of the trade secrets taken from the victim  
5 or victims in this case. It cannot be underestimated or  
6 underplayed. To have access to such valuable intellectual  
7 property is immense, to have access to it and to breach trust  
8 and take it from the employer or employers in this case.

9 So the Court is not dealing with loss, actual or  
10 intended, because counsel have agreed that there is no loss.  
11 And when the Court inquired, the government said no actual loss  
12 and no intended loss. So I am disregarding that. The issue of  
13 restitution remains before the Court, however.

14 So I have focused on the gravity of the conduct. And  
15 also two extremely important factors. One is deterrence. I'm  
16 less concerned about deterrence as to Mr. Pu. Although he does  
17 continue to have access to computers and related technology and  
18 there is always the potential for a future unlawful conduct on  
19 his part. Although as argued very eloquently by his counsel,  
20 there is nothing at this juncture to indicate in any way that  
21 he is likely to commit crimes in the future.

22 Also there is the important factor of general  
23 deterrence. You have personal deterrence as to Mr. Pu. But  
24 general deterrence so that others who would find themselves in  
25 a similar position would not violate the law. And as counsel

1 has brought to the attention of the Court, there are at least  
2 five other cases of significance with similar circumstances and  
3 similar violations of the law. And so general deterrence is a  
4 major factor as well.

5 In addition to all of that, to impose a sentence that  
6 is too light would deprecate the seriousness of what has  
7 actually occurred in this case. It is correct to say that  
8 Mr. Pu seems to be moving well along on the road toward  
9 rehabilitation. Of course he has a way to go. And that can be  
10 covered in terms of supervised release conditions, those that  
11 were previously imposed by the Court.

12 So I have looked at all of this material time and  
13 again and heard the very meritorious arguments of all counsel  
14 in this case. The range is 12 to 18 months. It is the  
15 judgment of the Court that the defendant is committed to the  
16 Bureau of Prisons to serve 18 months in the Bureau of Prisons  
17 for the reasons I have just indicated. It is the gravity of  
18 the conduct, the need for general deterrence, and so as not to  
19 deprecate the seriousness of what actually has occurred in this  
20 case.

21 So 18 months in the Bureau of Prisons. Of course he  
22 is working well along in getting credit for good time served.  
23 I would hope that that will continue, but that is something for  
24 him and the Bureau of Prisons to deal with. It is the judgment  
25 of the Court that the defendant serve 18 months in the Bureau

1 of Prisons.

2 The sentencing in this case is not yet complete  
3 because of the restitution issue, and we have continued that to  
4 a future date. And so since the judgment itself is not  
5 complete, it may not be necessary to advise Mr. Pu of his  
6 appellate rights. If he perceives this judgment as complete or  
7 if counsel see this judgment as complete, then of course any  
8 notice of appeal would have to be filed within 14 days in the  
9 Clerk's Office. Mr. Pu could file that himself. And if Mr. Pu  
10 could not afford counsel for purposes of the appeal, the Court  
11 would appoint counsel. But my view of the matter is that while  
12 this restitution issue remains, the judgment is not yet  
13 complete.

14 What is the government's position regarding finality  
15 of this judgment?

16 MR. OTLEWSKI: We need to resolve the restitution,  
17 your Honor.

18 THE COURT: So your position is that the judgment is  
19 not yet complete.

20 MR. OTLEWSKI: Correct.

21 THE COURT: What's the defendant's position?

22 MR. FLACHSBART: It is the same, your Honor.

23 THE COURT: So we will deal with advising Mr. Pu of  
24 appellate rights after the restitution is determined by the  
25 Court. I've given you a future date. There are many ways to

1 resolve this issue. Thank you, counsel.

2 MR. FLACHSBART: Thank you, your Honor.

3 MR. OTLEWSKI: Your Honor, I'm sorry, there are a few  
4 other matters. In light of the Seventh Circuit's decisions in  
5 recent history regarding conditions of supervised release.

6 THE COURT: Well, we can take those up on the next  
7 date. If they need revision or modification, I will ask the  
8 probation officer -- were you the original probation office in  
9 this matter?

10 MS. RICE: I was her supervisor.

11 THE COURT: So much the better. So looking at the  
12 conditions of supervised release, update your recommendations.  
13 And we can deal with that on the next hearing as well.

14 MS. RICE: Your Honor, I will file something.

15 THE COURT: Thank you.

16 MR. OTLEWSKI: No, your Honor, thank you.

17 MR. FLACHSBART: Thank you, your Honor.

18 (Which concluded the proceedings:)

19 CERTIFICATE

20 I HEREBY CERTIFY that the foregoing is a true, correct  
21 and complete transcript of the proceedings had at the hearing  
22 of the aforementioned cause on the day and date hereof.

23 /s/Pamela S. Warren  
24 Official Court Reporter  
25 United States District Court  
Northern District of Illinois  
Eastern Division

November 29, 2016  
Date